IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 1485 of 2007(B)

PETITIONERS:

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1. JOSE JOSEPH, S/O. JOSEPH, AGED 56 YRS,
   KACHIRA HOUSE, MEENKUNNAM KARA,
   AARAKKUZHA VILLAGE, MUVATTUPUZHA TALUK.

2. MARY JOSE, W/O. JOSE, AGED 54 YEARS,
   KACHIRA HOUSE, MEENKUNNAM KARA,
   AARAKKUZHA VILLAGE, MUVATTUPUZHA TALUK.

BY ADV. SRI.N.N.ELAYATH
SRI.P.V.ELIAS

RESPONDENTS:

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1. THE JOINT REGISTRAR,
   ERNAKULAM DISTRICT CO-OPERATIVE SOCIETY,
   ERNAKULAM.

2. THE SPECIAL SALE OFFICER,
   ERNAKULAM DISTRICT CO-OPERATIVE BANK,
   KAKKANAD.

3. THE BRANCH MANAGER,
   ERNAKULAM DISTRICT CO-OPERATIVE BANK,
   RURAL BRANCH, MUVATTUPUZHA.

BY SENOR GOVERNMENT PLEADER SHRI P.N. SANTHOSH R1
BY ADV. SRI.P.V.SURENDRANATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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W.P(C). NO. 1485 OF 2007

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Dated this the 14th day of February, 2007

J U D G M E N T

Petitioners had availed a loan of Rs.2,00,000/- from the third respondent Bank. They committed default in repayment of the loan amount. Bank initiated action for realisation of the amount by sale of properties of petitioners. Bank filed ARC No.436 of 2002 and an award was passed in the said proceedings on 20.10.2004. Bank also filed Execution Petition No.185 of 2006. It is at that stage, this Writ Petition is filed. At the time of admission this Court stayed the sale of the properties on condition that petitioners remit a sum of Rs.25,000/-.

2. Learned counsel appearing for the petitioners submitted that they are entitled to get the benefit of One Time Settlement Scheme and substantial amounts are to be written off. Learned Standing Counsel for the Bank had submitted that loan was availed not for agricultural purposes but for commercial purposes and since loanees committed default, proceedings were initiated and an award was passed as early as on 20.10.2004. It

is also argued that in case petitioners are ready to repay the amount, it will waive the penal interest and petitioners need only pay interest at the rate of 14% from the date of award. It is also submitted that in spite of such a specific offer, petitioners did not repay any amount, but approached this Court. It is further submitted that petitioners are wilful defaulters and in such case this Court may not interfere with the matter. It is also submitted that principal debtors, utilising the loan taken, have purchased properties in the name of their son so as to defeat the rights of the Bank.

3. I do not think it necessary to consider the rival contentions. After hearing both sides, I am of the view that one more opportunity can be given to the petitioners to get some concession in repaying the loan amount. In case petitioners deposit a sum of Rs.1,50,000/- within one month from today and make an application seeking time to clear the arrears, the Bank shall honour it and shall not realise any penal interest and only charge interest at the rate of 14% from the date of award. The Bank shall also consider whether it is possible to give six

instalments to the petitioner to pay off the balance of arrears.

In the result, Writ Petition is disposed of in the following manner: Petitioners are directed to deposit Rs.1,50,000/- before the third respondent within one month from today and make an application seeking time to clear the arrears. On such deposit and receipt of the application, the Bank shall waive the penal interest and charge interest only at the rate of 14% from the date of award. Bank shall also consider whether the petitioners can be allowed to deposit the arrears in six equal monthly instalments. In case petitioners fail to comply with the conditions ordered above, Bank is free to proceed with the proceedings already initiated by it.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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. R.P. NO.

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O R D E R

4TH JANUARY, 2007